

Decision 08-02-006 February 14, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Time Warner Cable Information
Services (California), LLC (U-6874-C) For
Authority to Discontinue Telecommunications
Services in the State of California.

Application 07-07-010
(Filed July 13, 2007)

**OPINION ADDRESSING APPLICATION OF TIME WARNER CABLE
INFORMATION SERVICES, LLC FOR AUTHORITY TO DISCONTINUE
TELECOMMUNICATIONS SERVICES IN
THE STATE OF CALIFORNIA**

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
OPINION ADDRESSING APPLICATION OF TIME WARNER CABLE INFORMATION SERVICES, LLC FOR AUTHORITY TO DISCONTINUE TELECOMMUNICATIONS SERVICES IN THE STATE OF CALIFORNIA	2
1. Summary	2
2. Background.....	2
3. Compliance with the Guidelines	3
4. Exit Plan	4
5. Industry Notification.....	5
6. Timetable for Customer Notification.....	7
7. Contents of the Customer Notice	8
8. Mass Migration Process Coordination	9
9. Customer List and Customer Service Records (CSR).....	9
10. Progress Reports	10
11. NXX Code Transfers.....	10
12. E-911.....	11
13. Criteria for Commission Approval of a Carrier's Termination of Service.....	11
14. Selection of a Default Carrier	12
15. Reimbursement of Default Carriers' Costs During Mass Migration	20
16. Applicability of Default Carriers' Tariff Provisions and Commission Requirements During Mass Migrations	23
17. Categorization and Need for Hearings	25
18. Comments on Proposed Decision	25
19. Assignment of Proceeding	25
Findings of Fact.....	25
Conclusions of Law	28
ORDER	30

Appendix A: January 17, 2008 letter

Appendix B: February 7, 2008 letter

**OPINION ADDRESSING APPLICATION OF TIME WARNER CABLE
INFORMATION SERVICES, LLC FOR AUTHORITY TO DISCONTINUE
TELECOMMUNICATIONS SERVICES IN
THE STATE OF CALIFORNIA**

1. Summary

This opinion authorizes Time Warner Cable Information Services (California), LLC (TWCIS or Applicant) to discontinue the provision of regulated, circuit-switched local exchange and intrastate interexchange telecommunications services in portions of 21 Southern California cities. Applicant has complied with the Mass Migration Guidelines (Guidelines) adopted by Decision (D.) 06-10-021. Applicant's remaining customers who have not selected another carrier will be transitioned to one of three carriers, depending on where they are located. This proceeding is closed.

2. Background

Applicant is authorized by D.04-03-032 to provide limited facilities-based and resold local exchange and interexchange telecommunications services in California.

Applicant filed Application (A.) 07-07-010 on July 13, 2007, requesting authority to discontinue the provision of regulated, circuit-switched, facilities-based local exchange and interexchange telecommunications services to customers in 21 Southern California cities. Notice of the application appeared on the Commission's Daily Calendar on July 27, 2007. There were no protests to the application; however, Pacific Bell Telephone Company (dba AT&T California) and Verizon California Inc. (Verizon) filed responses on July 30 and August 2, 2007, respectively.

AT&T California volunteered to be designated as a default carrier for those areas in which it provides local exchange service. AT&T California urged the

Commission to afford it reasonable recovery of extraordinary costs associated with a mass migration, and flexibility in the migration deadlines. Verizon stated that it was willing to accept any customers who chose to initiate service with it, but was not willing to be designated a default carrier. On August 10, 2007, TWCIS filed a consolidated reply to the responses. On September 11, 2007, TWCIS amended its consolidated reply to the responses.

Applicant seeks leave to discontinue the provision of regulated, circuit-switched, facilities-based local exchange and interexchange telecommunications to 10,444¹ customers in portions of 21 Southern California cities. Applicant requested expedited treatment of its application so that it could discontinue service on or before October 18, 2007, but it extended the transition period for the migration of its customers to the proposed default carriers until March 1, 2008.²

3. Compliance with the Guidelines

The Commission's requirements governing the discontinuance of telecommunications services by competitive carriers such as Applicant are set forth in D.06-10-021. That decision adopted Guidelines that apply when a CLEC files an application to discontinue providing local exchange services to its

¹ The Application states that approximately 40,000 customers would be affected. However, Applicant subsequently informed the assigned Administrative Law Judge (ALJ) in its February 6, 2008 progress report that, as of February 4, 2008, 5,265 customers would be affected. 2,754 customers are in Verizon territory, 2,285 customers are in AT&T California territory and 226 are in Playa Vista.

² TWCIS Amended Consolidated Reply at 1.

customers (exiting CLECs).³ The Guidelines give the exiting CLEC's customers the opportunity to migrate to another local exchange carrier without interruption of service.

The Guidelines require the filing of an application for discontinuance of service that includes an exit plan, notification of carriers potentially affected by the discontinuance of service, and customer notification. Customers must be notified 60 days in advance of the final service termination date and a second notice must be given to customers who have not taken action to select a carrier.

The Guidelines also provide a mass migration process, including determining an overall program manager, and submitting customer list information and progress reports to Commission staff. The Guidelines incorporate procedures for transferring NXX codes⁴ and unlocking telephone numbers in the E-911 database. Finally, the Guidelines establish criteria for Commission approval of a CLEC's termination of service and for appointing a default carrier in situations where the exiting carrier has not found an arranged carrier to serve the customers who have not selected another carrier. We address Applicant's compliance with the Guidelines below.

4. Exit Plan

An exiting CLEC must file an application to withdraw from service and must continue to provide service until the Commission approves the application.

³ Prior to adoption of D.06-10-021, we handled CLEC exit issues on a case-by-case basis, although we established requirements for utilities to provide customer notification when withdrawing service or transferring customers. (See D.02-01-038.)

⁴ An "NXX Code" is a block of 10,000 telephone numbers represented by the second set of three digits of a telephone number. An NXX Code is also referred to as a "prefix."

The application must contain an exit plan, and be filed with the Commission at least 90 days in advance of the proposed date for the CLEC's discontinuance of service.

Applicant filed its application and exit plan on July 13, 2007. The application required supplementation to be in compliance with our requirements. The Commission's Communications Division (CD) has reviewed the exit plan, and worked with Applicant to revise the plan.⁵ The revised exit plan provides for a February 21, 2008 "cut-off date,"⁶ and a March 20, 2008 exit date to ensure Applicant's remaining customers receive adequate notice⁷ before they are migrated to another carrier and to provide the default carriers sufficient time to undertake the migration. The CD has determined that Applicant's revised exit plan satisfies our requirements. Therefore, Applicant's exit plan is adequate and timely filed.

5. Industry Notification

At the same time an exiting CLEC files its application and exit plan with the Commission, it must serve the documents on any carrier with whom it has arranged to assume Applicant's customers (arranged carrier), all local exchange carriers known to provide service in the affected area, all underlying network service providers used by the exiting CLEC, any other parties to whom the

⁵ The CD was formerly named the Telecommunications Division.

⁶ The "cut-off date" is the date TWCIS can start placing its customers on "soft dial tone." "Soft dial tone" is audibly the same as a regular one, except that there is no actual service active on the line.

⁷ The November 14, 2007 Customer Notice advised customers of the need to make a change in providers by December 7, 2007.

exiting CLEC is required to give notice under related interconnection, resale, or service agreements, and the CD.

Applicant stated in its initial exit plan that it is serving the affected customers on facilities supplied by Comcast Phone of California, LLC and TWCIS.

Applicant's initial exit plan also stated that although it did not have an arranged carrier, it was in the process of contacting "the carriers of last resort, AT&T California and Verizon," to make customer service arrangements for those companies to implement a dedicated toll-free number for TWCIS customers and to ensure that the incumbent local exchange carriers' (ILECs) customer service representatives could respond to the inquiries and service requests of TWCIS customers whose service(s) are being disconnected. In its Consolidated Reply, TWCIS proposed that the Commission allow TWCIS's affiliate, TWC Digital Phone,⁸ to serve as a default carrier in the Playa Vista neighborhood in Verizon territory.⁹ TWCIS also proposed that the Commission permit it, after additional and specific notice, to transfer a small number of non-responding Lifeline customers in the Playa Vista neighborhood to Race Technologies, Inc. (Race Technologies).¹⁰ In its Amended Consolidated Reply, TWCIS noted that Race

⁸ TWC Digital Phone provides interconnected voice over Internet protocol to residential customers in California.

⁹ Verizon advised the Commission and Applicant, in its August 2, 2007 Response, that it does not have copper or fiber facilities in place to serve customers in the Playa Vista neighborhood located on 1,087 acres in southwestern Los Angeles.

¹⁰ Applicant states that Race Technologies is a CLEC that has agreed to provide Lifeline service to the Playa Vista development customers that have not selected an alternative carrier. It further believes that Race Technologies would also be willing to serve any

Footnote continued on next page

Technologies had, as of September 11, 2007, applied for, but not yet received, a certificate of public convenience and necessity (CPCN) from the Commission.¹¹

In the Amended Consolidated Reply, TWCIS asserted that while it was attempting to work with both AT&T California and Verizon to develop a process and plan for the transition of any non-responsive customers to those carriers' services, both carriers declined to do so until the Commission acted upon its application. TWCIS urged the Commission to convene a conference call among the parties to determine how to proceed in the face of such an impasse. The assigned ALJ held eight telephonic status conferences¹² in order to facilitate coordination between Applicant and the two ILECs.

The CD has determined that after several supplements and updates, Applicant's industry notification satisfies our requirements. Thus, Applicant has satisfied our industry notification requirements.

6. Timetable for Customer Notification

The Guidelines require the exiting CLEC (and, when applicable, any arranged carriers) to jointly notify customers 60 days in advance of the final service termination date. The notification letter must comply with FCC and Commission requirements including a listing of the service rates and terms of

customers that do not wish to be transferred to the TWC Digital Phone service when the circuit-switched service is discontinued. (Consolidated Reply at 6.)

¹¹ Race Technologies applied for CPCN to operate as Race Telecommunications, Inc. (Race) on September 7, 2007. *See*, A.07-09-004. It was certificated on January 10, 2008 in D.08-01-009.

¹² The conferences took place on September 24, October 9, October 23, November 6, November 27, November 30, December 7, and December 13, 2007.

any arranged carrier named in the notice. Applicant mailed a written notice to all of its affected customers on November 14, 2007, and has met our requirement to notify customers 60 days in advance.

7. Contents of the Customer Notice

The Guidelines specify certain information that must be included in the exiting CLEC's customer notice letters so that customers are adequately informed of the proposed termination of service, their need to take prompt action, and their right to choose an alternative carrier. A second notice must be given to each customer who has not taken action to select a replacement carrier. If there is a default carrier, the second notice must provide its name and toll-free contact number, and must allow customers 30 days to select a new local exchange carrier.

We require the customer notice to be provided in the language used to sell the services.¹³ In addition, CLECs, arranged carriers, and/or default carriers must submit notification letters to the Commission's Public Advisor and the CD for approval.

TWCIS's application included a copy of the initial notice letter (the English version) containing the information required by our Guidelines. Applicant submitted copies of its second notice for Commission approval on October 25, 2007. The CD has reviewed Applicant's notices and determined that the notices comply with our requirements concerning the content of customer notifications.

¹³ D.96-10-076.

8. Mass Migration Process Coordination

The Guidelines require exiting CLECs to have an overall program manager responsible for coordinating the mass migration. Applicant's November 16, 2007 progress report identifies and provides contact information for its project manager, and therefore satisfies this requirement.

9. Customer List and Customer Service Records (CSR)

At least 60 days prior to the projected cut-off date, the exiting CLEC must submit its customer list to the Commission. Carriers' submission of customer lists and staff use of, or disclosure of customer list information are subject to applicable laws and regulations relating to public disclosure of records, confidential trade secret status, and privacy protections. On December 3, 2007, Applicant submitted its customer list to the CD.¹⁴ Applicant submitted its customer list more than the required 60 days prior to the projected cut-off date. Moreover, Applicant noted that it expects the customer list to decrease between now and the proposed February 21, 2008 date for the commencement of the discontinuance. Consequently, it intends to periodically update the customer list going forward. Periodic updating of the customer list is acceptable; therefore, Applicant shall update the customer list at least twice before the projected cut-off date and submit the updated lists to CD.

Exiting CLECs must also have available the CSR data elements specified in the Guidelines that are needed to enable any carrier to migrate the exiting

¹⁴ The customer lists were provided directly to the CD pursuant to General Order (GO) 66-C, which prohibits disclosure of records and information of a confidential nature furnished to, or obtained by the Commission. Pub. Util. Code § 583 prohibits the CD from disclosing such information.

CLEC's customers seamlessly. Applicant states that it keeps all of the required data in its records, and that this information will be made available to other carriers that a customer may choose. Thus, Applicant has satisfied our requirement to have available the CSR data elements needed to enable any carrier to migrate Applicant's customers seamlessly.

10. Progress Reports

Our Guidelines require an exiting CLEC to track the progress of the migrations and provide the CD with progress reports. As of September 24, 2007, Applicant participated in eight status teleconferences and provided the assigned ALJ, the CD, AT&T California, and Verizon with progress reports before, during and/or after the teleconferences. These reports have tracked the progress of customer migrations in both AT&T California and Verizon service territories, as well as in the Playa Vista development. Thus, Applicant has satisfied our requirements to track the progress of the migrations and provide progress reports.

11. NXX Code Transfers

An exiting CLEC must make transfer arrangements with the telephone numbering administrator at least 66 days prior to the migration (or by such earlier date as may be specified by the code administrator) for any NXX codes or thousand number blocks assigned to it. Applicant represents that no NXX code issues exist for purposes of this transfer. TWCIS does not hold any NXX code blocks in the Los Angeles area and all customers that are transferred will have their numbers ported. The underlying code holder for the TWCIS circuit-switched service in Los Angeles is Comcast, although it no longer holds any number blocks in the Los Angeles area. Accordingly, there are no additional

steps that need to be taken with the number code and/or pooling coordinator with respect to Applicant's proposed Exit Plan.

12. E-911

Our Guidelines require an exiting CLEC to unlock all of its telephone numbers in the E-911 database, consistent with the National Emergency Numbering Association's standards. This will allow any new local service provider access to its new end users' E-911 records. An exiting CLEC must also submit a letter to the appropriate E-911 service provider at least 30 days prior to exiting the market authorizing the E-911 service provider to unlock any remaining E-911 records after the CLEC has exited the market. In its application, TWCIS states that, to the extent necessary, it will unlock all of its telephone numbers in the E-911 database. TWCIS also asserts that it will submit a letter to the appropriate E-911 service provider, 30 days prior to its proposed discontinuance date,¹⁵ authorizing the unlocking of remaining E-911 records after TWCIS has exited the market. Consequently, we direct TWCIS to file a copy of the letter it submits to the E-911 service provider. With the filing of the letter, Applicant meets our E-911 requirement.

13. Criteria for Commission Approval of a Carrier's Termination of Service

A CLEC must continue providing local exchange service until its application to withdraw service is approved by the Commission. In deciding whether to approve a CLEC's application we consider the progress made toward migrating customers, the availability of alternatives, and the nature of the customer base that is in jeopardy of losing local service.

¹⁵ Targeted as February 21, 2008.

In its November 16, 2007 progress report, Applicant indicated that 30,398 customers (70% of its original affected customers) had switched to an alternate local service carrier, or had otherwise made firm arrangements to switch to another local carrier. By February 4, 2008, 39,439 customers had switched to alternate carriers.¹⁶ With the exception of the Playa Vista development, there is at least one alternative provider available to Applicant's customers, and those customers who have not switched to another local carrier should easily be able to obtain alternate local service. Also, as discussed below, default carriers have been designated to serve any of the Applicant's remaining customers who have not selected another carrier. We find no reason to deny Applicant's request to discontinue service; therefore, we grant Applicant's request.

14. Selection of a Default Carrier

When there is no arranged carrier and customers have not selected a new carrier in a reasonable period of time, the Commission may require that a default carrier provide service.¹⁷ CLECs and ILECs willing to serve as the default carrier must file a response within 15 days of the filing of the application and exit plan. Prospective default carriers must also note if they have any limitations on service, either by geographic area or type of service. The selected default carrier must be in compliance with Commission rules and regulations, and be able to

¹⁶ Specifically, these numbers represent an 87% decrease in lines in service since July 2, 2007 for Verizon's service area, an 90% decrease for AT&T California's service area, and an 84% decrease in lines in service in Playa Vista. Progress Report of Time Warner Cable Information Services, February 6, 2008.

¹⁷ The Commission may require compensation for the default carrier under some circumstances.

serve the entire geographic service area of the exiting CLEC (with preference given to carriers that provide the type of service provided by the exiting carrier).

If no carrier volunteers, the default carrier will either be the underlying network service provider, the carrier of last resort¹⁸ in the area being served, or a carrier that offers the same type of service as the exiting carrier, if the replacement carrier has the facilities to serve some or all of the exiting carriers' remaining customers.

On July 30, 2007, AT&T California filed a response to A.07-07-010, requesting designation as the default carrier for Applicant's customers in those areas in which it provides local exchange service.¹⁹ Specifically, AT&T California seeks to be designated as the default local exchange carrier for "local dial-tone only." No other carrier within the areas where both TWCIS and AT&T California provide service has volunteered to serve Applicant's customers, and no party has opposed the request. The CD recommends that AT&T California be designated the default carrier for Applicant's customers in those areas in which it provides local exchange service. AT&T California is a COLR in a number of areas where Applicant's affected customers are located, offers similar services to those of Applicant, and has facilities to serve Applicant's remaining customers in those geographic areas in which it provides service.

¹⁸ A carrier of last resort (COLR) is a public utility that is obligated to serve all the customers in a service area who request service. D.96-10-066 designated all ILECs as COLRs and established a process for designating CLECs to become COLRs.

¹⁹ AT&T California noted that it does not currently provide local exchange service in all the geographic areas that TWCIS serves.

On August 2, 2007, Verizon responded to the default carrier issue in A.07-07-010, asserting that it was willing to accept any customers who choose to initiate service with Verizon, but it was unwilling to be designated the default carrier in those TWCIS service territories in which it provides local exchange service. Verizon listed three objections to default carrier designation. First, migrating customers from a facilities-based carrier to Verizon would entail significant and extraordinary costs.²⁰ Second, Verizon does not have facilities in some areas that TWCIS currently serves. Third, there is a significant risk of “double migrations” which would occur when involuntarily migrated customers subsequently choose to leave Verizon.

Verizon has urged the Commission to delay approving TWCIS's application until Applicant has transferred 95% of the approximately 40,000 customers to an alternative carrier. Verizon argued that the Guidelines were not created to facilitate a withdrawal from service to facilitate a carrier's change in marketing strategy. TWCIS maintains that it is compelled to discontinue service as a result of the expiration of its network facilities contract with AT&T Communications, Inc.²¹ Verizon also asserted that the role of default carrier would be difficult and costly to perform in this context because each individual customer transfer must be preceded by a carrier visit to the customer's property or premises. Consequently, involuntary or forced customer migrations will be

²⁰ A technician would have to be dispatched to each customer's residence to disconnect the customers inside wiring from TWCIS's facilities and connect them to a Verizon network interface device. This could require multiple visits. (Verizon Response at 2.)

²¹ Following questioning at the November 30, 2007 status teleconference, TWCIS clarified that it was subleasing the network facilities from Comcast.

infeasible. Each carrier acknowledges that the customer transfer must follow a request or invitation to enter onto a customer's property or into a customer's premises.

In a November 20, 2007 Consolidated Summary of Exit Plan Information, TWCIS emphasized that it should not have to reimburse AT&T California and Verizon for any costs or charges associated with the transition of non-responding customers to these carriers in their ILEC service areas. Instead, TWCIS asked the Commission to designate TWC Digital Phone to serve as default carrier for “any remaining customers who do not choose a new service provider.”²² In its December 5, 2007 Motion for Party Status, TWC Digital Phone requested default carrier designation in all of Verizon’s territory.

The CD recommends that Verizon be designated the default carrier for Applicant’s customers in those areas in which it provides local exchange service and has the necessary facilities. Verizon is the COLR in several areas where Applicant’s affected customers reside, offers similar services to those of Applicant, and has facilities to serve Applicant’s remaining customers.

Verizon does not have facilities to provide service to customers in Playa Vista. TWCIS proposed in its September 11, 2007 Consolidated Amended Reply that the Commission consider new CLEC applicant, Race, as a possible default carrier for Playa Vista’s Lifeline customers.²³ At that time, Race had not directly sought formal designation as an arranged or default carrier, nor had it intervened in this proceeding. However, in September 2007, it filed for the

²² November 20, 2007 Consolidated Summary at p. 2.

²³ As well as non-responding customers who have not selected an alternate carrier.

necessary certification to operate as an authorized provider of limited facilities-based and local exchange service. TWCIS reiterated its proposal to become the default carrier for Lifeline customers in the Playa Vista neighborhood, and represented that it would offer its Digital Voice service to the existing 23 customers at the current Lifeline rate.²⁴ On December 5, 2007, Race moved to intervene herein²⁵ and offered to serve as a default carrier in Playa Vista for TWCIS's remaining Lifeline customers.

In this case, designating more than one default carrier is necessary because some of Applicant's customers have not yet selected a new carrier and those remaining nonresponding customers are located in the service territories of two COLRs and in an area where neither COLR has facilities. In its December 5, 2007 pleading, Race requested designation as the default carrier for Lifeline customers in Playa Vista,²⁶ once it received certification. On December 19, 2007, Race filed supplemental information in support of TWCIS's application, and stated that its affiliate, Race Technologies, was then providing Lifeline services to customers in Playa Vista. It further maintained that Playa Vista customers had complained to the Commission about the fees Race Technologies charged them for migrating from TWCIS to Race Technologies; however, after discussions with Commission

²⁴ November 9, Letter to ALJ Reed and November 16, 2007 Progress report. Figure is updated as of December 5, 2007.

²⁵ Pursuant to the November 28, 2007 ALJ Ruling Designating Default Carriers.

²⁶ Race stated that until certificated, Race Technologies would be providing Lifeline service.

staff, it refunded the offending fees and settled the complaints.²⁷ We note that now that Race has received a CPCN, it offers the Playa Vista community an alternative carrier with service similar to that which TWCIS discontinues with this application and it claims to have the facilities with which to serve TWCIS's customers. Its entry into the local exchange carrier market as well as into the Playa Vista community increases choice and should benefit the public interest.

Notwithstanding TWCIS's repeated requests that the Commission designate TWC Digital Phone as default carrier for all of its remaining nonresponding customers, we find such action to be infeasible at this time. The Guidelines require a candidate for default carrier designation to be an "ILEC or CLEC ... in compliance with Commission rules and regulations." TWC Digital Phone does not meet this requirement, because its regulatory status in California is unclear at present. Further, the designation of TWC Digital Phone as the sole default carrier would jeopardize the Guidelines' goal to "(m)aintain [the Commission's] ability to monitor events and assist parties."²⁸ The Commission is best able to monitor and assist the actions and customers of a certificated ILEC or CLEC.

In addition, TWCIS has indicated that it does not want to reimburse the designated default carriers for any of the associated migration costs. Thus, it appears that seeking to avoid the reimbursement of default carriers' migration costs is a central reason for the request to have TWC Digital Phone designated as

²⁷ Race Technologies, Inc.'s Supplemental Information Provided in Support of Time Warner Cable Information Services (California), LLC's Application for Authority to Discontinue at p.1 (December 5, 2007).

²⁸ *Opinion Adopting Mass Migration Guidelines*, D.06-10-021, *mimeo.* at p.10.

default carrier for TWCIS's entire service area. The Guidelines provide for the reimbursement of default carriers' migration costs by an exiting carrier. TWCIS's insistence that it should not have to reimburse costs is contrary to the Guidelines. Moreover, the designation of AT&T California and Verizon, in their respective service areas, is consistent with the Guidelines preference for the selection of default carriers "that provide the type of service provided by the exiting carrier."

Here, the technical specifics of customer transfer to the default carrier(s) in this situation differs from the technical specifics of transfer to the typical default carrier. The Guidelines seek to facilitate "the seamless transfer of end users when their carrier exits the market."²⁹ In most instances, the customer transfer can occur regardless of the customer's failure to advise the exiting carrier of its wishes. In this circumstance, the technical requirements of discontinuing TWCIS's circuit-switched service and continuing with AT&T California, Verizon, Race, or TWC Digital Phone service necessitates a "break" in the transfer. To minimize the impact of this break, after February 21, 2008, TWCIS shall begin to downgrade the service of its remaining customers to "soft dial tone."³⁰ Nevertheless, TWCIS's customers should be fully informed about the interruption of their essential voice service, the need for them to make an affirmative choice, and the commitment by all concerned to ensure that the interruption of service is as brief as possible.

²⁹ D.06-10-021, *mimeo.* at p. 19.

³⁰ Here, "soft dial tone" will provide customers with the ability to make only 911 calls and 611 calls to TWCIS customer service.

The downgrade to "soft dial tone" shall be done on a rolling basis. TWCIS shall send out a notice, no less than five business days prior, specifying the exact date the service downgrade will occur so that customers will have time to obtain service with a new carrier and avoid the service downgrade. Soft dial tone will ensure public safety by permitting customers to reach emergency services and by providing a final warning to the customer that he or she needs to make arrangements with an alternative carrier for unrestricted telephone service. TWCIS may discontinue service to the customer placed on soft dial tone after 21 days with notice to the CD.

While the technical imperatives of this case distinguish it from the usual voluntary discontinuance of service, the need for default carriers remain. Even with the unavoidable interruption in telephone service, Lifeline and non-Lifeline customers need to know that there is a carrier designated and prepared to provide service to them. To that end, on November 28, 2007, the assigned ALJ issued a ruling designating AT&T California, Verizon, and TWC Digital Phone as the default carriers for Applicant's remaining customers in the respective ILEC service areas and Playa Vista. We affirm the ALJ's ruling with respect to AT&T California and Verizon. However, now that Race is certificated and "able to formally accept the migration of any Lifeline customers or other circuit-switched customers, currently served by TWCIS," we shall grant Race's request to be designated as default carrier in Playa Vista. With this appointment of a qualified certificated carrier that offers service similar to that being discontinued and prepared to serve the Playa Vista community, we remove the default carrier designation and obligation from TWC Digital Phone. Non-responding Playa Vista customers will now be offered the opportunity to transfer their service to Race, or make arrangements to transfer to TWC Digital Phone.

The third-party verification requirements of Pub. Util. Code § 2889.5 do not apply to Applicant's customer base transferred to AT&T California, Verizon, Race, and TWC Digital Phone in this mass migration.

15. Reimbursement of Default Carriers' Costs During Mass Migration

At the direction of the assigned ALJ, the parties have been attempting to reach agreement on equitable compensation to providers for assuming TWCIS's non-Lifeline remaining customers and its Lifeline customers, who will not be able to switch to TWC Digital Phone service and continue to remain in the Lifeline program.³¹ To date, TWCIS has reached an accord on the issue with both AT&T California and Verizon. TWCIS has strongly asserted that it does not think that the default carriers should be reimbursed for any of the costs that they sustain as a result of transitioning its nonresponding customers. It argues that reimbursement is not warranted, because as the COLRs in their respective service areas, AT&T California and Verizon are "obligated to provide service to customers in these areas;" if they refuse, they will be abdicating their duties as carriers of last resort.³² AT&T California and Verizon disagree that their status as

³¹ The exceptions to this are the Lifeline customers in Playa Vista. TWCIS has proposed to transition the remaining Playa Vista Lifeline customers, who do not choose to go to Race once it is certificated, to TWC Digital Phone. TWCIS offered that TWC Digital Phone would provide Digital Phone service to the remaining customers at the Lifeline rate, but would not seek reimbursement from the Lifeline fund, because it is not a participant in the Lifeline program. *Response to Inquiry of Administrative Law Judge: Consolidated Summary of Exit Plan Information*, at p. 4 (November 20, 2007).

³² *Consolidated Reply to Responses of Pacific Bell Telephone Company d/b/a AT&T California and Verizon Inc.*, at pp. 2 and 5 (August 10, 2007). Race has been silent regarding the issue of reimbursement of migration costs. Therefore, this discussion addresses the issue and agreements with respect to AT&T California and Verizon.

COLRs negates their entitlement to reimbursement. They contend that the costs that they will sustain as default carriers differ from those that they would bear solely in the role of COLR. We agree.

As directed in the December status conference call, TWCIS met and conferred separately with AT&T California and Verizon³³ regarding (1) the process under which each company will act as a default carrier for TWCIS customers in each one's respective franchise territory, and (2) the issue of reimbursement of extraordinary costs to each company by TWCIS, if any. AT&T California and Verizon have agreed to the following approach, and both parties have advised TWCIS that they do not anticipate incurring any costs that will be subject to reimbursement by TWCIS if this approach is observed.

First, TWCIS sent the current 30-day notice prior to discontinuance, required by the Commission, on or about January 20, 2008. Because soft dial tone is being initiated on a rolling basis, TWCIS will send customers a further notice thereafter, informing them when they will actually be placed on soft dial tone. Second, to help in expediting any transfers of service, TWCIS will provide both carriers a list of remaining customers in their respective service areas. AT&T California and Verizon may choose to directly contact these customers to offer service. Both carriers and TWCIS have agreed that TWCIS will provide the customer lists five days after it distributes its current 30-day notice, and thereafter, on a weekly basis. On a rolling basis, as of the commencement of the

³³ In its comments on the proposed decision, TWCIS advised the Commission about the agreement it had reached with Verizon settling the reimbursement of costs issue. The letters memorializing the two agreements are attached to the order as Appendices A and B.

discontinuance period set by the Commission, TWCIS will begin placing its customers, who remain on the TWCIS network, on soft dial tone.

Default carriers will not be required to contact TWCIS customers in order to provide them new service. Rather, TWCIS customers will secure new service by contacting the default carriers or any other service provider they choose. When any customer that TWCIS has placed on soft dial tone calls and indicates that they wish to have AT&T California or Verizon service initiated, TWCIS will cooperate with the carriers to either provide the customer with the carrier's appropriate customer service telephone number or transfer the customer to AT&T California's or Verizon's customer service office.

The Guidelines recognize that mass migrations, particularly those involving migrations to a default carrier, will give rise to extra costs. Moreover, default carriers' costs will vary. The costs of complex migrations will not be fully quantifiable until after the migration has occurred.³⁴ The instant migration, entailing the transfer of the customers of discontinued circuit-switched service with the necessary interruption in local voice service, will not be a simple process. In its response to TWCIS's application, AT&T California volunteered to become the default carrier in its service area and stated that it would waive nonrecurring charges and not seek reimbursement from TWCIS. However, at the time, it requested reimbursement of resultant "extraordinary costs."³⁵ In

³⁴ D.06-11-015, *mimeo.* at p. 13.

³⁵ AT&T California described such "extraordinary costs" as the costs associated with "(a) the distribution of customer notifications, (b) multiple visits to migrating customer's premises (multiple visits typically occur in a mass migration process when the customer has not chosen the default carrier as its new service provider and is not at home when the installation is attempted and/or does not provide AT&T California with the

Footnote continued on next page

contrast, Verizon asked that it not be designated default carrier because of the attendant burdens, and the uncertainty of reimbursement of migration costs. Verizon takes issue with the assigned ALJ having characterized the allowable migration costs for reimbursement as "extraordinary."³⁶ As Verizon notes, the Guidelines do not qualify the migration costs that are reimbursable. Instead, the Guidelines portend that certain migration costs will be necessary and quantifiable. The agreements between TWCIS, AT&T California and Verizon eliminate the need for us to further reach this issue.

16. Applicability of Default Carriers' Tariff Provisions and Commission Requirements During Mass Migrations

Pursuant to the Guidelines, AT&T California's, Verizon's, and Race's tariffed credit and collection procedures will apply to customers transitioned to them as part of the mass migration process. AT&T California's, Verizon's, and Race's other tariff provisions will apply when they do not conflict with these Guidelines and FCC requirements.

GO 133-B exception reporting requires carriers to file all quarterly reports addressing failure to meet service quality measures due to a mass migration 30 days after the quarter in which the migrations are completed. These failures are not subject to penalties.

necessary access to complete the installation), and (c) the placement of new facilities in the instance AT&T California facilities do not exist at the customer's premises." *AT&T California Response Requesting to be Designated Default Carrier*, at p. 4, fn 10 (July 30, 2007).

³⁶ Verizon counsel during December 13, 2007 Telephonic Status Conference referring to the November 28, 2007 ALJ Ruling Designating Default Carriers.

Operations Support Systems (OSS) performance measurement reports must also be filed when due, but AT&T California may request relief from incentive payments should the mass migration process associated with this proceeding result in a failure to meet applicable performance measures.³⁷

TWCIS states that it will cancel its residential circuit-switched voice tariff upon the discontinuance of service because it will no longer be providing state regulated voice telecommunications services in the State of California.

On February 6, 2008, the assigned ALJ directed TWCIS to advise the Commission in its comments on the Proposed Decision why it seeks only to cancel its residential circuit-switched voice tariff rather than its CPCN. TWCIS commented that its CPCN authorizes the provision of competitive local and interexchange telecommunication services, through which it has a tariff on file³⁸ which permits TWCIS to offer intrastate telecommunication services in California.³⁹ By means of this tariff,⁴⁰ TWCIS offers high capacity data transport and other point-to-point telecommunications. Moreover, TWCIS plans to offer additional intrastate telecommunications services in the future, including wholesale telecommunications services that would be offered to the public and

³⁷ D.02-03-023 adopted an OSS performance incentives plan to provide incentives for AT&T California to give CLECs equitable access to its OSS infrastructure. The plan measures, evaluates, and imposes monetary charges on AT&T California for OSS performance that could inhibit competition by disadvantaging the CLECs.

³⁸ In addition to the circuit-switched voice tariff which it will be withdrawing, as noted above.

³⁹ TWCIS Comments on Proposed Decision at p. 3 (February 8, 2008).

⁴⁰ TWCIS Schedule 4.

to its affiliate, TWC Digital Phone. TWCIS also advises that it currently has in effect interconnection agreements with both AT&T California and Verizon in order to “assist its various current and future intrastate telecommunications service offerings.” TWCIS notes that it is utilizing the CPCN now and will continue to do so in the future.

17. Categorization and Need for Hearings

In Resolution ALJ 176-3196, dated July 26, 2007, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are not necessary. Based on the record, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

18. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment was reduced to nine days. No reply comments were accepted. On February 8, 2008, TWCIS filed comments addressing the issue that the assigned ALJ directed it to, advising of the settlement with Verizon, and noting inadvertent and typographical errors in the text of the Proposed Decision. We have included the substantive changes and corrections in the final decision.

19. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant is authorized by D.04-03-032 to provide limited facilities-based and resold local exchange and interexchange telecommunications services.

2. Applicant requests authority to discontinue local exchange and intrastate interexchange telecommunications services to approximately 5,265 customers, and to cancel its residential circuit-switched voice tariff upon the discontinuance of service because it will no longer be providing state regulated voice telecommunications services in the State of California.

3. The Application is unopposed.

4. On July 30, 2007, AT&T California filed a request to be designated the default carrier for Applicant's customers that are located in those areas where it provides service. No other carrier has volunteered to serve Applicant's customers, and no party has opposed AT&T California's request.

5. AT&T California is a carrier of last resort in some areas where Applicant's affected customers are located, offers similar services as those of Applicant, and has facilities to serve Applicant's remaining customers in those areas.

6. Verizon is a carrier of last resort in some areas where Applicant's affected customers are located, offers similar services as those of Applicant, and has facilities to serve Applicant's remaining customers in those areas.

7. TWCIS filed a request for default carrier designation in Playa Vista for TWC Digital Phone because Verizon has no facilities in the development and no other carrier, certificated or otherwise, served the area.

8. On November 28, 2007, the ALJ ruled that AT&T California, Verizon, and TWC Digital Phone are designated the default carriers to serve Applicant's remaining customers, who have not selected another carrier in the respective areas that they serve and have facilities.

9. TWC Digital Phone's regulatory status is unclear at present.

10. On December 5, 2007, Race moved to intervene and requested designation as the default carrier for Lifeline and other circuit-switched customers in Playa Vista.

11. Race was granted a CPCN in D.08-01-009.

12. Race is now certificated and able to formally accept the migration of any Lifeline customers or other circuit-switched customers, currently served by TWCIS.

13. Race offers similar services to those which TWCIS seeks to discontinue through this application.

14. A "soft dial tone" will minimize the impact of the interruption of local service this type of discontinuance requires.

15. Applicant's revised exit plan is adequate and timely filed.

16. Applicant has satisfied the regulatory and industry notification requirements.

17. Applicant has satisfied the requirements concerning the contents and timing of customer notification letters.

18. Applicant has met the mass migration process requirements.

19. Applicant has satisfied the Commission's requirements for the discontinuance of service.

20. Applicant and AT&T California have reached an accord on the migration cost reimbursement issue.

21. Applicant and Verizon have reached an accord on the migration cost reimbursement issue.

22. Race did not address the issue of migration cost reimbursement.

23. In a facilities-based situation, as present here, it is technically infeasible to force migrate customers to the default carriers.

24. Because the arrangement agreed to by AT&T California and Verizon with TWCIS and approved herein does not involve forced migration, related extraordinary costs that default carriers might otherwise have are not present.

25. Approximately 39,439 of Applicant's affected customers have voluntarily switched to other service providers.

26. None of Applicant's customers are in jeopardy of losing access to a local service provider. As the default carriers, AT&T California, Verizon, and Race will serve Applicant's remaining customers that choose them as their carrier.

27. Applicant is in good standing with the Commission regarding its reporting and payment of surcharges and regulatory fees.

Conclusions of Law

1. This is a ratesetting proceeding.

2. There is no need for hearings.

3. AT&T California and Verizon should be designated the default carrier for Applicant's remaining customers who are located in the areas that they have facilities.

4. Race should be designated default carrier in Playa Vista because it offers similar services to those TWCIS seeks to discontinue in this application, it has the facilities to serve the Playa Vista customers, the Guidelines require that the designated carrier be in compliance with Commission rules and regulations, and Verizon has no facilities to provide service in this neighborhood.

5. The ALJ Ruling of November 28, 2007, designating AT&T California, Verizon and TWC Digital Phone as default carriers for Applicant's remaining customers should be affirmed with respect to AT&T California and Verizon.

6. The designation of TWC Digital Phone as the default carrier in Playa Vista should be retracted because a certificated carrier is now available to serve TWCIS's remaining customers in Playa Vista.

7. "Soft dial tone" service should be maintained throughout TWCIS's service area for three weeks before service is fully discontinued.

8. TWCIS's agreements with AT&T California and Verizon on the process for transitioning TWCIS's remaining customers should be approved.

9. AT&T California's, Verizon's, and Race's tariffed and collection procedures should apply to any of Applicant's customers transitioned to any one as the default carrier. All three carriers' other tariff provisions should apply when they do not conflict with D.06-10-021 or FCC requirements.

10. AT&T California and Verizon should be required to file all quarterly reports required under GO 133-B for failure to meet service quality measures due to a mass migration 30 days after the quarter in which the migrations are completed, but any failure to meet service quality measures due to a mass migration should not be subject to penalties.

11. OSS performance measurement reports should be filed when due, but AT&T California should be allowed to request relief from incentive payments if the mass migration process results in a failure to meet required measurements.

12. The third-party verification requirements of Pub. Util. Code § 2889.5 should not apply to Applicant's customers transitioned to AT&T California, Verizon, and Race.

13. TWCIS should cancel its residential circuit-switched voice tariff upon the discontinuance of service because it will no longer be providing state regulated voice telecommunications services in the State of California.

14. Because timing is essential in the mass migration of customers, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application of Time Warner Cable Information Services, LLC (Applicant) for authority to discontinue the provision of circuit-switched telecommunications services in California on March 28, 2008, and to cancel its residential circuit-switched voice tariff upon the discontinuance of service is granted.
2. Pacific Bell Telephone Company, doing business as AT&T California, and Verizon California Inc. (Verizon) are designated as default carriers for Applicant's remaining customers in those respective areas where AT&T California and Verizon provide service and have the necessary facilities.
3. Race Telecommunications, Inc. (Race) is designated the default carrier for Applicant's remaining customers in Playa Vista.
4. Applicant shall provide Time Warner Cable Digital Voice service at Lifeline rates to those existing Lifeline customers in Playa Vista who do not want to transfer to Race.
5. After February 20, 2008, TWCIS shall begin to downgrade the service of its remaining customers to "soft dial tone." The downgrade to "soft dial tone" shall be done on a rolling basis. TWCIS shall send out a notice, no less than five business days prior, specifying the exact date the service downgrade will occur. TWCIS may discontinue service to a customer placed on soft dial tone after 21 days, provided that it notifies the Communications Division no less than five business days prior to discontinuing the service.

6. Applicant and AT&T California shall implement the agreement concerning customer transition costs set forth in the January 17, 2008 letter attached hereto as Appendix A.

7. Applicant and Verizon shall implement the agreement concerning customer transition costs set forth in the February 7, 2008 letter attached hereto as Appendix B.

8. AT&T California's, Verizon's, and Race's tariffed credit and collection procedures shall apply to any of Applicant's customers transferred to AT&T California, Verizon, or Race, respectively, as the default carrier on or after February 21, 2008. AT&T California's, Verizon's, and Race's other tariff provisions shall apply when they do not conflict with Decision 06-10-021 or Federal Communications Commission requirements.

9. AT&T California and Verizon shall file all quarterly General Order 133-B reports addressing failure to meet service quality measures due to transitioning Applicant's customers 30 days after the quarter in which the migration is completed. Failure to meet service quality measures due to transitioning Applicant's customers shall not be subject to penalties.

10. AT&T California shall file Operations Support Systems performance measurement reports when due. AT&T California may request relief from incentive payments if the mass migration process for Applicant's customers results in a failure to meet applicable performance measures.

11. The third-party verification requirements of Pub. Util. Code § 2889.5 shall not apply when Applicant's customers are transferred to AT&T California, Verizon and Race.

12. Applicant shall file an advice letter, effective on one-day notice, cancelling its residential circuit-switched voice tariff on file with the Commission, as soon as its circuit-switched telecommunications services are discontinued.

13. Application 07-07-010 is closed.

This order is effective today.

Dated February 14, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners